

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

REC'D 17 DEC 2004

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To:

see form PCT/ISA/220

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY
(PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/IB2004/052071

International filing date (day/month/year)
12.10.2004

Priority date (day/month/year)
14.10.2003

International Patent Classification (IPC) or both national classification and IPC
G07F7/00, G06F17/60

Applicant
KONINKLIJKE PHILIPS ELECTRONICS, N.V.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/IB2004/052071

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/IB2004/052071

Box No. II Priority

1. ☒ The following document has not been furnished:

- ☒ copy of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(a)).
- ☐ translation of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3. ☐ It has not been possible to consider the validity of the priority claim because a copy of the priority document was not available to the ISA at the time that the search was conducted (Rule 17.1). This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.
4. Additional observations, if necessary:

Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-14
	No: Claims	
Inventive step (IS)	Yes: Claims	
	No: Claims	1-14
Industrial applicability (IA)	Yes: Claims	1-14
	No: Claims	

2. Citations and explanations

see separate sheet

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/IB2004/052071

Re Item V.

- 1 The following documents are referred to in this communication:

D1: EP-A-0 135 631 (VERTX CORP) 3 April 1985 (1985-04-03)
D2: US-A-5 595 264 (TROTТА JR FRANK P) 21 January 1997 (1997-01-21)
D3: US 2002/065680 A1 (KOJIMA AKITOSHI ET AL) 30 May 2002 (2002-05-30)
D4: US-A-3 023 851 (STILLER BRUNO V) 6 March 1962 (1962-03-06)
D5: WO 96/39671 A (POWELL KEN R) 12 December 1996 (1996-12-12)
D6: US-A-3 920 100 (DUNPHY LAWRENCE CYRIL) 18 November 1975 (1975-11-18)
D7: WO 94/01838 A (MARKETING CONSULT NORD GMBH ; SCHEFFLER VOLKER
(DE)) 20 January 1994 (1994-01-20)

2 INDEPENDENT CLAIMS

- 2.1 The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 1 is not inventive in the sense of Article 33(3) PCT.
- 2.2 The subject-matter of claim 1 relates to a system for dispensing product samples comprising a sample card with an incorporated machine-readable label. The sample card is distributed to customers by means of a distributor. A writer writes data associated with a product onto the label. The card can then be brought to a product distributing device which reads the label and distributes packaged at least one sample based on information stored in a database (description of the application, page 2, l. 17-25). Therefore, for the purposes of the following examination, the label will be interpreted as a storage for product data which can be written into it, said storage being incorporated in a card (sample card).
- 2.3 Document D1 discloses: a system for dispensing products comprising: a machine-readable label ("strip of magnetic tape on a plastic card"; page 4, l. 6-8); a machine-readable label writer for writing data associated with a product onto the machine-readable label (page 4, l. 6-11); and a device for distributing products comprising: a machine-readable label reader for reading the machine-readable label (page 8, l. 7-14); means for distributing products (page 5, l. 8 - page 7, l. 36); and a processor for

receiving data from the machine-readable label reader and directing the means for distributing products to distribute at least one product (page 8, l. 7-14; fig. 9).

- 2.4 The subject-matter of independent claim 1 differs from the disclosure of D1 in that: (i) the products distributed are sample products; (ii) sample cards incorporating the labels are distributed by means of a distributor; (iii) a database containing product information is comprised in the sample distributing device; (iv) packaging means are comprised in the sample distributing device.
- 2.5 It has to be noted that feature (i) relates merely to a business choice, i.e. whether to require payment for a certain product. The technical implications of this choice on a system such as the one disclosed in claim 1 are straightforward and the adaptations needed therefor would be obvious to the skilled person. Moreover, this feature is not functionally interdependent with any of features (ii), (iii) and (iv). Therefore, this feature cannot be regarded as contributing to an inventive step (Art. 33(3) PCT).
- 2.6 Features (ii), (iii) and (iv), when taken in combination, do not achieve a single technical effect, but are rather independently solving partial problems, namely: (ii) providing the customers with sample cards at the entrance of a store; (iii) identifying the products to be dispensed; (iv) enhancing the portability of the dispensed products.
- 2.7 As concerns problem (ii), the solution proposed in claim 1 of the present application cannot be considered as involving an inventive step (Article 33(3) PCT) since providing a card dispenser would be regarded by the skilled person as one of several straightforward possibilities from which he would select, in accordance with the circumstances, without the exercise of inventive skill, in order to solve the problem posed. The solution to problem (ii) is therefore not inventive (Art. 33(3) PCT). Furthermore, the sample card distributor as described in the application is very basic (see e.g. figure 1A of the application) and is not further characterised.
- 2.8 As concerns problem (iii), the solution proposed in claim 1 of the present application can neither be considered as involving an inventive step (Article 33(3) PCT). Although a database is not explicitly disclosed by D1, each receptacle is dedicated to a particular type of article so that the indicia on the card also correspond to particular receptacles

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/IB2004/052071

(page 5, l. 1-6) and the selection of a particular release mechanism of the dispensing device is dictated by the information encoded on the carrier (page 7, l. 15-16). Moreover, the use a database in order to associate information to an article identifier would be regarded by the skilled person as a matter of normal design procedure and cannot be held to contribute to inventive step (Art. 33(3) PCT). Therefore, the solution to problem (iii) is not inventive (Art. 33(3) PCT).

- 2.9 As concerns problem (iv), endowing the product distributing device with packaging means is a straightforward solution falling within the scope of the customary practice followed by persons skilled in the art (see e.g. D2, col. 1, l. 57-62 and col. 6, l. 54-56; D3, par. [0097]; D7, page. 8, l. 15-18). Therefore, the solution to problem (iv) is not inventive (Art. 33(3) PCT).

Therefore, claim 1 does not involve an inventive step (Art. 33(3) PCT).

- 2.10 Similar objections hold, *mutatis mutandis*, for independent claim 7, which defines the method counterpart of the system defined in claim 1. Therefore, claim 7 does not involve an inventive step (Art. 33(3) PCT).

- 2.11 The same objections also hold for independent claim 14, since the additional step defined therein, namely affecting the sale of goods or services based on sample distributed and the data written on the machine-readable label, merely relates to a method of doing business, does not imply any technical consideration and cannot therefore be held to contribute to inventive step (Art. 33(3) PCT). Therefore, claim 14 does not involve an inventive step (Art. 33(3) PCT).

3 DEPENDENT CLAIMS

- 3.1 Dependent claims 2-6, 8-13 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of inventive step (Article 33(3) PCT).
- 3.2 The additional feature defined in claim 2 relates to an obvious alternative for the sample card and the incorporated label, which is widely known from the prior art (see e.g. D3)

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/IB2004/052071

and whose implementation would be regarded as straightforward by the skilled person. Therefore, claim 2 does not involve an inventive step (Art. 33(3) PCT).

- 3.3 Claims 3-6 and 8-13 merely provide trivial specifications with respect to the system and method defined respectively in independent claims 1 and 7 and cannot be held to involve an inventive step (Art. 33(3) PCT).